



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

ADOPTION/AMENDMENT

State Agency:

West Valley Mission Community College District

A written comment period has been established commencing on **January 14, 2005** and closing on **February 28, 2005**. Written comments should be directed to the Fair Political Practices Commission, Attention Teri Rindahl, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review; unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any

written comments must be received no later than **February 28, 2005**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Teri Rindahl, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Teri Rindahl, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. SECRETARY OF STATE

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments regarding the

proposed action. The Secretary of State adopted the proposed regulations as emergency regulations on February 5, 2004, readopted amended emergency regulations on June 1, 2004 and September 29, 2004. The emergency regulatory action is scheduled to expire on January 28, 2005, unless the Office of Administrative Law receives a certificate of compliance from the Secretary of State by January 27, 2005 or the emergency regulations are readopted.

PROPOSED REGULATORY ACTION

The Secretary of State proposes to adopt Section 20107 of Article 7 of Chapter 1 of Division 7 of Title 2 of the California Code of Regulations, as amended in the proposed text of the regulations, which establishes uniform standards for proof of residency or identity when a voter or new registrant is required by law to provide proof. The proposed amendments are clarifying in nature.

The proposed regulations provide for two basic types of documentation to prove residency or identity. The first type of documentation provided for in paragraph (1) of subdivision (d) of Section 20107 is valid and current identification prepared by a third party in the ordinary course of business that includes the photograph and name of the individual presenting it. Examples are listed in paragraph (1) and include, but are not limited to: driver's license or identification card issued by any state; passport; identification card issued by a commercial establishment; credit or debit card; and employee, military, student, health club, or insurance plan identification card.

The second type of documentation that can be used to prove residency or identity consists of those documents listed in paragraph (2) of subdivision (d) of Section 20107 provided that the document is current, valid, and includes the name and address of the individual presenting. The documents listed in paragraph (2) include: utility bill; bank statement; government check or paycheck; and sample ballot, voter notification card, public housing identification card, lease or rental agreement, and student identification card issued by governmental agencies.

PUBLIC HEARING

The Secretary of State has not scheduled a public hearing on this proposed action. However, the Secretary of State will hold a hearing if a written request for a public hearing is received from any interested person, or his or her authorized representative, no later than fifteen (15) days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Secretary of

State. The written comment period closes at 5:00 p.m. on March 1, 2005. Only written comments received at the office of the Secretary of State by that time shall be considered. Submit written comments to the contact person or backup contact person listed below.

AUTHORITY AND REFERENCE

Authority cited: Section 12172.5, Government Code; and Section 2124, Elections Code.

Reference cited: Section 14310, Elections Code; Section 303, Pub. L. No. 107-252, 116 Stat. 1666 (2002) [42 U.S.C. 15483].

INFORMATION DIGEST AND POLICY STATEMENT OVERVIEW

Senate Bill 613 (Perata), Chapter 809, Statutes of 2003, enacted certain provisions required by the federal Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252, 116 Stat. 1666 (2002) [42 U.S.C. 15483]. This bill became effective January 1, 2004, adding Section 2124 to the Elections Code and amending Section 14311 of the Elections Code.

HAVA was drafted in the aftermath of the controversial 2000 presidential election in Florida and signed into law on October 29, 2002 by the President of the United States. Complex and interrelated federal mandates are included in the 161-page bill. HAVA provides federal funding to states conditioned upon the implementation of certain requirements, including the modernization of voting systems, elections official and poll worker training, voter education, accessibility to voting systems by individuals with disabilities or with alternative language needs, establishment of a statewide database, complaint procedure, and provisional balloting among other changes.

Pursuant to subsection (b) of Section 303 of HAVA, a state shall, in a uniform and nondiscriminatory manner, require an individual to meet certain requirements if the individual registered to vote in a jurisdiction by mail and has not previously voted in an election for federal office in the state or has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a state that does not have a HAVA-compliant statewide voter registration computerized list. The requirements depend on whether the individual votes in person or by mail. If the individual votes in person, then he or she must present to the appropriate state or local elections official a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. If the individual votes by mail, then he or she must submit with his or her ballot a copy of a current and valid photo identification or a copy of a current

utility bill, bank statement, government check, pay-check, or other government document that shows the name and address of the voter.

Prior to January 1, 2004, Section 14311 of the Elections Code permitted a voter who moved within the same county but had not reregistered to vote at the new address to vote on the day of the election at the polling place of the current address upon showing proof of the current residence address. This section further required the Secretary of State to adopt regulations establishing the forms of identification that would qualify as proof of current residence address. Consequently, the forms of identification were added to Section 20107 in 1996. Senate Bill 613 deleted the requirement that a voter must show proof of the current residence address and the requirement that the Secretary of State adopt corresponding regulations. The emergency regulations adopted on February 5, 2004 repealed the provisions relating to proof of current residence address for provisional ballots in Section 20107 of Title 2 of the California Code of Regulations.

Senate Bill 613 also added Section 2124 to the Elections Code, requiring the Secretary of State to adopt uniform standards for proof of residency, which shall apply to all instances where voters or new registrants are required by law to prove residency. Under HAVA some voters may be required to present identification at the polls and some voters who register by mail or vote by absentee ballot may be required to include a copy of their identification. The emergency regulations adopted on February 5, 2004 added the uniform standards for proof of residency when proof is required by law to Section 20107. The certificate of compliance for the emergency regulations was required to be filed on June 4, 2005 or the emergency language was to be repealed by operation of law on June 5, 2004, unless the emergency regulations were readopted.

The Secretary of State readopted emergency regulations on June 1, 2004. During the readoption process, the language in subdivision (a) of Section 20107 indicating that the section applies "at the time of voting" was deleted. The language was originally added to the text during the Office of Administrative Law's review of the initial emergency regulations. However, such language is inconsistent with paragraph (3) of subsection (b) of Section 303 of HAVA, which permits a person to submit copies of the specified documents with his or her voter registration affidavit. The certificate of compliance was required to be filed by September 29, 2004 or the emergency regulations would be repealed by operation of law on September 30, 2004, unless the emergency regulations were readopted.

Since the emergency regulations were initially adopted on February 5, 2004, the Secretary of State has continued to evaluate the effectiveness of the standards, conferring with county elections officials, the Department of Motor Vehicles, other state elections officials, the Election Assistance Commission, and other interested parties to determine the best practices with respect to the identification requirements. However, the Secretary of State has been unable to finalize the provisions of the subject emergency regulations, as the federal Election Assistance Commission had not promulgated the guidelines regarding the implementation of the HAVA voter identification requirements as set forth in subdivision (b) of Section 303 of HAVA. These guidelines were to be promulgated pursuant to paragraph (3) of subdivision (b) of Section 311 by October 1, 2003. Therefore, the Secretary of State again readopted the emergency regulations on September 29, 2004, which are scheduled to expire on January 28, 2005, unless the Secretary of State submits a certificate of compliance by January 27, 2005 or readopts the provisions.

The proposed amendments to the text of the emergency regulations are clarifying in nature.

AVAILABILITY OF TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person listed below.

DISCLOSURES REGARDING THE EMERGENCY REGULATIONS

The Secretary of State has made the following determinations.

Cost or savings to any state agency: The proposed regulations do not present a cost or savings to any state agency. Although the Secretary of State has the responsibility of notifying county elections officials of the uniform standards, there is no associated cost as this is accomplished through existing lines of communication.

Mandate on local agencies or school districts and, if so, whether the mandate requires reimbursement under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: The proposed regulations define the types of documentation that will serve as proof of residency and identity when proof is required by HAVA and do not pose any costs. The Secretary of State has determined that the proposed rulemaking does not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed rulemaking does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." The California Supreme Court has established that a "program" within

meaning of Section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

Other non-discretionary cost or savings imposed upon local agencies: The Secretary of State has not identified any other non-discretionary cost or savings imposed upon local agencies.

Cost or savings in federal funding to the state: HAVA provides for federal funding to states conditioned upon the implementation of several mandates, including federal funding for poll worker training. The proposed regulations are necessary to satisfy the mandates regarding voter identification.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Secretary of State has made an initial determination that the proposed regulations do not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are a product of federal mandates regarding voting outlined in HAVA.

Cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The Secretary of State is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations are a result of federal mandates outlined in HAVA to prevent the disenfranchisement of voters.

Adoption of these proposed regulations will not do any of the following: (1) create or eliminate jobs within California; (2) create new business or eliminate existing business within California; nor (3) affect the expansion of business currently doing business within California.

Significant effect on housing costs: The proposed regulations relate to voting and have no significant effect on housing costs.

BUSINESS REPORTING REQUIREMENT

The business reporting requirement is not applicable to the regulations as the subject matter is voting.

SMALL BUSINESS DETERMINATION

The Secretary of State has determined that the proposed regulations do not affect small business. The proposed regulations establish uniform standards for proof of residency and identity when a voter or new registrant is required by law to provide proof.

CONSIDERATION OF ALTERNATIVES

In accordance with paragraph (13) of subdivision (a) of Section 11346.5 of the Government Code, the Secretary of State must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State shall have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this notice, the rulemaking file consists of this notice published in the Notice Register, the text of the proposed regulations, and the initial statement of reasons. For further information regarding inspection of the rulemaking file, contact Lisa Niegel, Staff Counsel, at (916) 653-3345 or Janee Marlan, the designated back-up contact, at (916) 657-2182. Copies of the rulemaking file may be obtained at www.ss.ca.gov/elections/elections.htm or by contacting Lisa Niegel, Staff Counsel, who is listed below as the contact person, or Janee Marlan, who is listed below as the designated back-up contact person.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the close of the public comment period, the Secretary of State may adopt the proposed regulations substantially as described in this notice. If the Secretary of State makes modifications which are sufficiently related to the originally proposed text, the modified text with changes clearly indicated shall be available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person or designated back-up contact person listed below. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available. Once the final statement of reasons is prepared in accordance with subdivision (a) of Section 11346.9 of the Government Code, copies may be obtained at www.ss.ca.gov/elections/elections.htm or by contact-

ing Lisa Niegel, Staff Counsel, who is listed below as the contact person, or Janee Marlan, who is listed below as the designated back-up contact person.

CONTACT PERSON

Direct all inquiries and requests for copies of proposed text of the regulations, initial statement of reasons, modified text of regulations, if any, or other information upon which the rulemaking file is based to Lisa Niegel, Staff Counsel, or Janee Marlan, the designated back-up contact person, at Secretary of State's Office, Elections Division, Attention: Lisa Niegel, Staff Counsel, 1500 11th Street, Sacramento, California 95814.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Sections 1446.9, subsection (c) and 1454.16, subsection (c) of the regulations in Title 3 of the California Code of Regulations pertaining to standardized fruit size, specifically nectarines and peaches.

Notice is also given of a written public comment period. Any interested person may present statements or arguments in writing relevant to the proposed regulation until 5:00 p.m. on February 28, 2005. Please refer to the contact section of this notice for the contact persons and address information when submitting comments.

A public hearing is not scheduled but will be if any interested person, or his or her duly authorized representative, submits a written request for public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing (if one is requested) or following the written comment period (if no public hearing is requested), the Department of Food and Agriculture, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 401 of the California Food and Agricultural Code declares that the California Department of Food and Agriculture (Department) shall promote and protect the agricultural industry of California. Section 407 declares that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which he is directed or authorized to administer or enforce.

Existing Section 1446.9, subsection (c) of the California Code of Regulations establishes size descriptions and a corresponding number of nectarines

packed in volume-filled nonconsumer containers to achieve an established weight of sixteen pounds per sample.

The specific purpose of amending Section 1446.9, subsection (c) is to modify the maximum number of fruit necessary to meet this sixteen-pound sample requirement.

Existing Section 1454.16, subsection (c) establishes size descriptions and a corresponding number of peaches packed in volume-filled nonconsumer containers to achieve an established weight of sixteen pounds per sample.

The specific purpose of amending Section 1454.16, subsection (c) is to modify the maximum number of fruit and to adopt two additional size descriptions with a corresponding number of fruit necessary to meet the sixteen-pound sample requirement.

FISCAL IMPACT STATEMENTS

The Department has initially determined that these proposed regulations would have no effect on savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations. The Department determined that these proposed regulations do not impose a mandate on local agencies or school districts.

EFFECT ON SMALL BUSINESS

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes. This is based on the following: In recent years, use of new shipping containers has made it necessary to adjust the shape and configuration of the internal plastic trays and cavity molds used for shipping peaches and nectarines. The proposed changes merely adjust the existing fruit sizes and establish two additional sizes specifically for peaches to accommodate these packing changes. This will facilitate more orderly marketing by ensuring standardized fruit size nomenclature and more accurate product labeling. The proposed amendments meet the needs of the affected commodity groups without requiring change on the part of industry.

EFFECT ON HOUSING COSTS

The Department has initially determined that the amendments of the proposed regulation would have no effect on housing costs.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESS**

The Department has initially determined that these proposed changes would have no statewide adverse economic impact directly affecting businesses, including the ability for California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has initially determined that the proposed changes in the regulations would not affect the creation or elimination of jobs in California and would neither create nor eliminate or expand existing businesses in California.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESS**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407 and 42682 of the Food and Agricultural Code, and to implement, interpret, and make specific Section 42941 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

CONTACT

Inquiries concerning the proposed administrative action may be directed to Sonja Dame or Gary Manning. Inquiries pertaining to the substance of the proposed regulation may be directed to Gary Manning. The contact persons may be reached at the Department of Food and Agriculture, Inspection and Compliance Branch, 1220 N Street, Sacramento, CA 95814, (916) 445-2180, fax (916) 445-2427. Written comments may also be submitted via e-mail to sdame@cdfa.ca.gov.

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

A complete copy of existing regulations, the proposed changes, and the Initial Statement of Reasons may be obtained on request from the Department of Food and Agriculture. These documents are available on our website at www.cdfa.ca.gov/cdfa/regs.

In addition, all information, including reports, documentation, and other materials (rulemaking file) related to the proposed action is available upon request from the agency contact persons named in the notice. The Final Statement of Reasons, when available, may also be obtained from the agency contact persons named in the notice. If the regulations adopted by the Department differ from, but are sufficiently related to the original action proposed, they will be made available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

**TITLE 8. DIVISION OF LABOR
STANDARDS ENFORCEMENT**

NOTICE OF PROPOSED RULEMAKING

The Division of Labor Standards Enforcement (DLSE) proposes to adopt the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PUBLIC HEARINGS

DLSE has scheduled three public hearings on this proposed action:

San Francisco

Date: Tuesday, February 8, 2005

Time: 9:00 a.m.

Place: Hiram Johnson State Building, Auditorium
455 Golden Gate Avenue
San Francisco, CA 94102

Los Angeles

Date: Friday, February 4, 2005

Time: 9:00 a.m.

Place: Ronald Reagan State Building, Auditorium
300 South Spring Street
Los Angeles, CA 90013

Fresno

Date: Wednesday, March 2, 2005

Time: 9:00 a.m.

Place: Fresno State Building, Room 1036
2550 Mariposa Mall
Fresno, CA 93721

Please note that public comment will begin promptly at 9:00 a.m. and will conclude when the last speaker has finished his or her presentation.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. DLSE requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or authorized representative, may submit written comments to DLSE relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on March 2, 2005. All comments must be submitted in writing (by mail, fax or e-mail) and received by that time at DLSE's headquarters office. Submit comments to:

Allen Perlof, Senior Deputy Labor Commissioner
Division of Labor Standards Enforcement,
9th Floor West
P.O. Box 420603
San Francisco, CA 94142
E-mail: dlsecomments@dir.ca.gov
FAX (415) 703-4807

Written comments received in connection with the December 31, 2004 notice, Notice File Number Z-04-1220-01, will be included for consideration in the January 14, 2005 notice.

PROPOSED REGULATORY ACTION

DLSE proposes to adopt section 13700, Meal and Rest Periods, in Title 8 of the California Code of Regulations.

DLSE proposes to adopt section 13700 to clarify that the one hour of pay an employer must pay an employee for each workday in which a meal or rest period is not provided in accordance with the applicable Industrial Welfare Commission Order is considered a penalty as well as to clarify the time parameters and criteria under which meal periods can be provided to employees.

AUTHORITY AND REFERENCE

Labor Code sections 53, 54, 55, 59, 95, 98(a), 98.8, 1193.5, and 1198.4 authorize DLSE to promulgate the proposed regulation, which will implement, interpret and make specific Labor Code sections 226.7 and 512, as follows:

Labor Code section 53 provides that the Director of the Department of Industrial Relations is the "head of the department" for purposes of section 1001 and Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code, including the provisions on administrative rulemaking, except for those matters which are specifically committed to one of the divisions of the department.

Labor Code section 54 authorizes the Director of the Department of Industrial Relations to perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the department, except as otherwise expressly provided.

Labor Code section 55 authorizes the Director of the Department of Industrial Relations, notwithstanding any provision in the Labor Code to the contrary, to require any division in the department to assist in the enforcement of any or all laws within the jurisdiction of the department. This section also authorizes the Director to make rules and regulations that are reasonably necessary to carry out the provisions of the Labor Code relating to the Department of Industrial Relations and to effectuate its purposes.

Labor Code section 59 mandates the Department of Industrial Relations, through its appropriate officers, to administer and enforce all laws imposing any duty, power, or function upon the offices or officers of the department.

Labor Code section 95(a) authorizes DLSE to enforce the provisions of the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board or commission.

Labor Code section 98(a) authorizes the Labor Commissioner to investigate employee complaints.

Labor Code section 98.8 authorizes the Labor Commissioner to promulgate all regulations and rules of practice and procedure necessary to carry out the provisions of Chapter 4 of Division 1 of the Labor Code.

Labor Code section 1193.5 specifies that the provisions of Chapter 4 of Division 1 of the Labor Code shall be administered and enforced by DLSE.

Labor Code section 1198.4 provides that, upon request, the Chief of DLSE shall make available to the public any enforcement policy statements or interpretations of orders of the Industrial Welfare Commission.

The above cited Labor Code sections provide DLSE with the authority to interpret Labor Code sections 226.7 and 512 for purposes of enforcing these statutes. Furthermore, in the 1996 California Supreme Court case of *Tidewater Marine Western, Inc. v. Victoria L. Bradshaw* (14 Cal. 4th 557, 569-70), the Supreme Court provided:

"The DLSE's primary function is enforcement, not rulemaking . . . Nevertheless, recognizing that enforcement requires some interpretation and that these interpretations should be uniform and available to the public, the Legislature empowered the DLSE to promulgate necessary 'regulations and rules of practice and procedure.'"

The finding in the *Tidewater* case confirms that DLSE has the authority to interpret Labor Code sections 226.7 and 512 for purposes of interpreting these statutes for enforcement purposes.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing statute specifies that employers cannot allow employees to work more than five hours without providing a 30-minute meal period. Existing law is unclear as to the specific time parameters under which meal periods can be provided to employees. Furthermore, the law does not provide criteria to determine if an employer has met the statutory requirement of providing a meal period. Additionally, existing law does not define the term "work period."

Existing statute provides that an employer who fails to provide an employee a meal period or rest period is required to pay the employee one additional hour of pay at the employee's regular rate of pay for each work day that the meal or rest period is not provided. Existing law has been the subject of conflicting interpretations as to whether the one hour of pay is to be considered a wage or penalty.

The proposed regulation would: (1) establish criteria to determine if an employer has met the requirement of providing a meal period; (2) clarify that the initial meal period in a workday may commence by the end of the sixth hour of the workday; (3) provide a definition of the term "work period"; and (4) clarify that the one hour of pay an employer must pay an employee for each workday in which a meal or rest period is not provided in accordance with the applicable Industrial Welfare Commission Order is considered a penalty.

DISCLOSURES REGARDING THE PROPOSED ACTION

Significant Statewide Adverse Economic Impact Directly Affecting Businesses:

DLSE has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact on directly affected businesses, including the ability of California businesses to compete with businesses in other states.

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3(b)):

DLSE has made an initial determination that adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.

Effect On Small Business:

DLSE has determined that the proposed regulation may affect small businesses.

Cost Impacts On Representative Private Persons Or Businesses:

DLSE has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. DLSE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Local Mandate Determination:

DLSE has determined that the proposed regulatory action does not impose any mandate on local agencies or school districts.

Costs on Local Agencies or School Districts:

DLSE has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. Furthermore, DLSE has determined that the proposed regulatory action does not impose costs on any local agency or school district which must be reimbursed in accordance with Government Code section 17561.

Cost Or Savings To State Agencies:

DLSE has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

Effect On Federal Funding To The State:

DLSE has determined that the proposed regulatory action results in no costs or savings in federal funding to the State.

Effect On Housing Costs:

DLSE has made an initial determination that the adoption of this regulation will have no significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

DLSE must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of DLSE, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action. DLSE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the hearings or during the written comment period.

CONTACT PERSONS

The text of the proposed regulation, the initial statement of reasons, and the modified text of the regulation, if any, may be accessed at DLSE's website (<http://www.dir.ca.gov/dlse>). For those without Internet access, requests for copies of the proposed text of the regulation, the initial statement of reasons, the

modified text of the regulation, if any, or other information upon which the rulemaking is based should be directed to:

Allen Perlof, Senior Deputy Labor Commissioner
Division of Labor Standards Enforcement,
9th Floor West
P.O. Box 420603
San Francisco, CA 94142
Telephone: (415) 703-4810
FAX (415) 703-4807

In the event the contact person is unavailable, inquiries regarding the proposed regulatory action should be directed to the following backup contact person:

Leslie Clements, Staff Services Manager
Division of Labor Standards Enforcement,
9th Floor West
P.O. Box 420603
San Francisco, CA 94142
Telephone: (415) 703-4810
FAX (415) 703-4807

Inquiries concerning the substance of the proposed action may be directed to Allen Perlof at the address and phone number specified above.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

DLSE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its San Francisco headquarters office at 455 Golden Gate Avenue, 9th Floor West, San Francisco, CA 94102, as specified herein. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulation are also available on the DLSE's website (<http://www.dir.ca.gov/dlse>). As of the date this notice is published in the Notice Register, the rulemaking file consists of: (1) this notice, (2) the proposed text of the regulation, (3) the initial statement of reasons, (4) veto message for Assembly Bill 3018; (5) Assembly Floor Analysis of AB 2509 as amended on August 25, 2000; (6) Portion of June 2000, minutes of the Industrial Welfare Commission; (7) DLSE memo rescinding certain opinion letters; and (8) *Tidewater Marine Western, Inc. v. Victoria L. Bradshaw* (14 Cal. 4th 557). Copies may be obtained by contacting Allen Perlof at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearings and considering all timely and relevant comments received, DLSE may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall

be made available to the public for at least 15 days prior to the date on which DLSE adopts the regulation. Requests for copies of the modified regulation, if any, should be sent to the attention of Allen Perlof at the address indicated above. DLSE will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on the DLSE's website (<http://www.dir.ca.gov/dlse>).

TITLE 10. DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

RH- 01013336

SUBJECT OF HEARING

Notice is hereby given that a public hearing will be held regarding the adoption of three new articles in the California Code of Regulations:

- California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 10.2, sections 2523.20 through 2523.25, entitled "Notices Regarding Sale or Liquidation of Assets and Standards for Medi-Cal Eligibility"
- California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 10.3, sections 2523.30 through 2523.31, entitled "Applications for Individual Variable Annuity Contracts, Variable Life Insurance Contracts, and Modified Guaranteed Contracts" and
- California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 10.4, sections 2523.40 through 2523.41, entitled "Seniors' Insurance."

The proposed regulations in Article 10.2 implement and make specific the provisions of California Insurance Code section 789.8. The proposed regulations contain definitions for "elder," "elder's agent," "financial product," and "Notice Regarding the Sale or Liquidation of Assets." They establish a written form for the written advice required by Insurance Code section 789.8(b). The proposed regulations state when a life agent must provide an elder or elder's agent with a copy of a Notice Regarding the Sale or Liquidation of Assets or a Notice Regarding Standards for Medi-Cal Eligibility. They set forth the procedures an agent must follow for securing a signature on each

of the notice forms and for distributing originals and copies of the notice forms. The regulations prescribe record-keeping requirements for the forms and penalties for violations of the regulations.

The proposed regulations in Article 10.3 implement and make specific the provisions of California Insurance Code sections 790.03(a), 790.03(b), and 10127.10. The proposed regulations require that application forms for certain life insurance and annuity products contain language by which purchasers who are 60 years of age or older can choose to invest their premium money in one of four types of investments during the initial 30 days of the contract.

The proposed regulations in Article 10.4 implement and make specific the provisions of California Insurance Code sections 785 and 787. The proposed regulations provide that when an advertisement for a seminar or similar event is directed towards persons age 65 or older and is paid for in whole or in part by an entity or person in the insurance industry, or an affiliate, the advertisement must disclose that the consumer's name may be made available to an insurance agent for the purpose of selling insurance.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes the adoption of Title 10, Chapter 5, Subchapter 3, Article 10.2, sections 2523.20 through 2523.25, pursuant to the authority vested in him by sections 789.6(h), 12921(a), and 12926 of the California Insurance Code. The Commissioner's decision on the proposed regulations will implement, interpret, and make specific the provisions of Insurance Code sections 785, 789, 789.3, 789.8, 10508, and 10508.5.

The Insurance Commissioner proposes the adoption of Title 10, Chapter 5, Subchapter 3, Article 10.3, sections 2523.30 through 2523.31, entitled "Applications for Individual Variable Annuity Contracts, Variable Life Insurance Contracts, and Modified Guaranteed Contracts" pursuant to the authority vested in him by sections 790.10, 12921(a), and 12926 of the California Insurance Code. The Commissioner's decision on the proposed regulations will implement, interpret, and make specific the provisions of Insurance Code sections 790.03(a), 790.03(b), and 10127.10.

The Insurance Commissioner proposes the adoption of Title 10, Chapter 5, Subchapter 3, Article 10.4, sections 2523.40 through 2523.41, entitled "Seniors' Insurance" pursuant to the authority vested in him by sections 789.6(h), 12921(a), and 12926 of the California Insurance Code. The Commissioner's decision on the proposed regulations will implement, interpret, and make specific the provisions of Insurance Code sections 785 and 787.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows:

Date and time: **March 10, 2005**
10:00 am*

Location: **Department of Insurance**
Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105

* The hearing will continue on the date noted until all testimony has been completed or 5:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled public hearing. Written comments should be addressed to the contact person:

Nancy Hom, Staff Counsel III
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4144

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the contact person listed above. If she is unavailable, inquiries may be addressed to the backup contact person:

Patricia Staggs, Assistant Chief Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4123

DEADLINE FOR WRITTEN COMMENTS

All written comments, whether submitted at the hearing, or by U.S. mail, or by e-mail or facsimile, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **5:00 p.m. on March 10, 2005**. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: homn@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the attention of the contact person at the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers**

will not be accepted. Comments sent by e-mail or facsimile are subject to the March 10, 2005 deadline for written comments set forth above.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST POLICY STATEMENT OVERVIEW

Article 10.2 Notices Regarding Sale or Liquidation of Assets and Standards for Medi-Cal Eligibility.

Insurance Code section 789.8 was enacted to prevent misleading sales pitches and misrepresentations directed against elderly people. The statute requires life agents selling life insurance and annuity products to elderly people to provide specified information to elders or their representatives concerning the sale of assets and Medi-Cal. The Department's objective in promulgating the proposed regulations in Article 10.2 is to implement, interpret, and make specific the provisions of Insurance Code section 789.8 by defining terms and phrases, requiring a standardized notice to meet certain statutory "written advice" requirements, by stating when statutorily required information must be provided to elderly consumers, by confirming that records must be kept, and by specifying applicable penalties. The overall objective is to facilitate enforcement of the consumer

protection provisions of Insurance Code section 789.8 and to implement the statute's protections for elderly individuals.

Article 10.3 Applications for Individual Variable Annuity Contracts, Variable Life Insurance Contracts, and Modified Guaranteed Contracts.

Insurance Code section 10127.10 provides in part that individuals 60 years of age or older may return certain variable insurance products within 30 days of purchasing them and receive a refund of their premium money or account balances. Section 10127.10 allows purchasers to invest their initial premium payment in any of four types of investments for the initial 30-day period if the consumer so chooses. The objective of the proposed regulation is to present the consumer with the statutory investment choices before the 30-day period begins rather than after it has started, because that is the simplest, most effective and most inexpensive way to effectuate the investment choice provisions of section 10127.10. This also reduces the chance that the consumer will have misunderstandings about the 30-day free look period or their investment choices at the time they enter into the transaction.

Article 10.4 Seniors' Insurance.

Insurance Code sections 785 and 787 require insurance agents and others to act in good faith and to make certain disclosures in advertisements aimed at consumers who are age 65 or older. Many seniors are unaware that when they provide their names at seminars or events connected with persons in the insurance industry that they may be targeted later by insurance agents who want to sell them annuities. The objective of the proposed regulations is to inform elderly consumers that if they provide their names at such seminars or events that their names may be made available to insurance agents for the purpose of selling insurance.

SUMMARY OF EXISTING LAW; EFFECT OF PROPOSED ACTION

Article 10.2

Proposed section 2523.20. Authority and Purpose.

Existing law does not state the authority and reference for the proposed regulations in Article 10.2. Proposed section 2523.20 states the authority and reference for the regulations.

Proposed section 2523.21. Definitions.

Existing law (Insurance Code section 789.8) uses terms and phrases that are not defined. Section 2523.21 of the proposed regulations defines terms used in section 789.8 and in the proposed regulations themselves. Proposed section 2523.21(a) defines the term "elder" as it is defined in the statute and used in

the proposed regulations. Proposed section 2523.21(b) defines “elder’s agent” as used in the statute and the regulations. Proposed section 2523.21(c) defines “financial product,” a term used in section 789.8 but never defined. Proposed section 2523.21(d) defines “Notice Regarding the Sale or Liquidation of Assets” as the written advice required by Insurance Code section 789.8(b). The definitions in the proposed regulations reduce confusion and ambiguity, clarify agents’ legal obligations, and assist the Department in identifying unlawful conduct for purposes of enforcement action.

Proposed section 2523.22. Notice Regarding the Sale or Liquidation of Assets.

If a life insurance agent offers to sell a life insurance or annuity product to an individual age 65 or older, existing law requires the agent to advise the elder or the elder’s agent in writing of specific financial consequences that may occur if the elder sells assets to purchase the insurance product. Existing law also requires the life agent to advise the elder in writing that they may want to “consult independent legal or financial advice” (sic) before selling an asset to fund the purchase of a life insurance or annuity product. However, existing law does not provide the wording of the written advice and does not state a particular format for it. To clearly identify what the statute requires and to prevent some life agents from implementing section 789.8(b) in such a way as to make it ineffective, such as printing the advice in very small type or phrasing the advice in a misleading way, proposed regulation section 2523.22 sets forth the required “written advice” in a standardized form and format. This will facilitate both compliance with and enforcement of the statute.

Proposed section 2523.23. Notice Regarding Standards for Medi-Cal Eligibility.

Existing law requires life agents to provide elders or elders’ agents with a “Notice Regarding Standards for Medi-Cal Eligibility” when they sell or offer to sell any financial product based on the product’s treatment under the Medi-Cal program. Existing law does not explain what is meant by selling or offering to sell a financial product based on the product’s treatment under the Medi-Cal program. Proposed regulation section 2523.23 defines when a financial product “shall be deemed to have been sold or offered for sale on the basis of the product’s treatment under the Medi-Cal program.” This should facilitate both compliance with and enforcement of the statute.

Proposed section 2523.24. Notice and Record-Keeping Requirements.

Existing law does not require the elder or the elder’s agent to date and sign the “written advice” required by Insurance Code section 789.8(b), and section 789.8(b)

contains no statement that the advice must be given to the elder or elder’s agent *before* they purchase a life insurance or annuity product rather than afterwards. Similarly, Insurance Code section 789.8(d) does not state that the Notice Regarding Standards for Medi-Cal Eligibility” must be given to the elder or elder’s agent *before* they enter into a transaction rather than afterwards. Existing law sets forth record-keeping requirements for insurers and insurance agents and brokers, but does not expressly state that the notices provided pursuant to Insurance Code section 789.8 are subject to existing record-keeping requirements. To ensure that the statutorily-required notices are provided before the sale of a financial product rather than afterwards, and that agents and insurers keep adequate records of the notices to document their compliance (or non-compliance) with the statute, section 2523.24 of the proposed regulations requires the section 789.8(b) notice to be dated and signed and requires copies of each notice to be provided to the elder or elder’s agent. Proposed section 2523.24 states when notices must be presented and signed, and it specifies applicable record-keeping requirements. Proposed section 2523.24 requires insurers and life insurance agents to maintain originals and copies of the notices for at least five (5) years, as required by Insurance Code section 10508 and 10508.5.

Proposed section 2523.25. Penalties.

Existing law (Insurance Code sections 789 and 789.3) sets forth penalties for violations of section 789.8, Article 6.3, Chapter 1, Part 2, Division 1 of the Insurance Code. Proposed section 2523.25 clarifies that these penalty provisions also apply to violations of the proposed regulations, and that other penalty provisions may apply as well.

Article 10.3

Proposed section 2523.30. Authority and Purpose.

Existing law does not state the authority and reference for the proposed regulations in Article 10.3. Proposed section 2523.20 states the authority and reference for the regulations.

Proposed section 2523.31. Applications for Individual Variable Annuity Contracts, Variable Life Insurance Contracts, and Modified Guaranteed Contracts that are Required to Set Forth Investment Choices.

Existing law (Insurance Code section 10127.10) provides in part that individuals 60 years of age or older may return certain variable insurance products within 30 days of purchasing them and receive a refund of their premium money or account balances. Section 10127.10 allows purchasers to invest their initial premium payment in any of four types of investments for the initial 30-day period if the consumer so chooses. However, under existing law

consumers are told of the 30-day free look period and the investment choices in the product they have already purchased rather than in the application form before they decide to purchase the product. Proposed section 2523.31 requires that the consumer be informed of the 30-day free look and the investment options in the application form for products offering these investment choices.

Article 10.4

Proposed section 2523.40. Authority and Purpose.

Existing law does not state the authority and reference for the proposed regulations in Article 10.4. Proposed section 2523.40 states the authority and reference for the regulations.

Proposed section 2523.41. Advertising Seminars or Events Directed towards Persons Age 65 or Older.

Existing law (California Insurance Code section 785(a)) provides that all insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older a duty of honesty, good faith, and fair dealing. Existing law (California Insurance Code section 787) also provides in part, "Any advertisement or other device designed to produce leads based on a response from a potential insured which is directed towards persons age 65 or older shall prominently disclose that an agent may contact the applicant if that is the fact. In addition, an agent who makes contact with a person as a result of acquiring that person's name from a lead generating device shall disclose that fact in the initial contact with the person." Despite existing law, California seniors are being repeatedly misled into providing their names at seminars or other events without knowing that their names are being obtained so that insurance agents can contact them later to sell them annuities. Proposed section 2523.41 requires advertisements for such seminars or events to carry a prominent disclosure which tells seniors that when they attend the seminar, their names may be made available to insurance agents for the purpose of selling insurance.

**MANDATES ON LOCAL AGENCIES
OR SCHOOL DISTRICTS**

The proposed regulations do not impose any mandate on local agencies or school districts.

**COST OR SAVINGS TO ANY STATE OR LOCAL
AGENCY OR SCHOOL DISTRICT; COST OR
SAVINGS IN FEDERAL FUNDING**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the

Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

**ECONOMIC IMPACT ON BUSINESSES
AND THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE**

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance agents and insurance companies. The Commissioner has considered performance standards, but the Commissioner has identified no performance standards that would be as effective as the proposed regulations in enforcing the statutes that form the basis for the proposed regulations. The Commissioner has not considered other proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance or reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards,
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

**POTENTIAL COST IMPACT ON PRIVATE
PERSONS OR ENTITIES/BUSINESSES**

The Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposed regulations. The proposed regulations are designed to prevent senior citizens from entering into unsuitable insurance transactions which cause seniors to lose millions of dollars. The regulations are expected to cause agents and insurers who induce seniors to enter into unsuitable or financially detrimental transactions to lose business because they will be completing fewer unsuitable or financially detrimental transactions. The Commissioner expects that the cost impact of the proposed regulations on life insurance agents and insurance companies generally would be the minimal cost of re-typing already-existing written notices and application forms so that they comply with the requirements of the regulations. The cost of printing the notices and application forms would remain the same. Insurers may have to re-file some product

application forms with the Department of Insurance for approval if they choose to offer products containing stock or bond fund investment options during the 30-day free look period of Insurance Code section 10127.10, but they may avoid this obligation by offering products without these investment choices. The filing expense is a routine expense incurred by insurers doing business in California.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the State that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs within the State of California as well as the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the State. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has initially determined that the proposed regulations may have a significant negative effect on some small businesses because the proposed regulations are designed to curtail the ability of life insurance agents to sell life insurance and annuity products based on incomplete, misleading, or false information. These agents may sell fewer life insurance and annuity products as a result of the proposed regulations. The proposed regulations may have a positive impact on small businesses to the extent the proposed regulations curtail the activities of agents who mislead consumers or otherwise violate the law, and law-abiding agents gain business as a result. To the extent independent insurance agents (as opposed to insurance company employees) are impacted by the proposed regulations, the Commissioner has identified

no reasonable alternatives to the proposed regulations that would lessen any adverse impact on small business while still enforcing compliance with existing law. The proposed regulations do not impact "small business" to the extent they impact insurers because insurers are not "small businesses" under Government Code § 11342.610. The Commissioner invites public comment on alternatives to the regulations.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed regulations. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the Initial Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding will be available on the Department's website. The documents shall include the proposed regulations, the Notice of Hearing and Informative Digest, the Initial Statement of Reasons, and, when has been prepared, the Final Statement of Reasons. To access documents concerning this proceeding, go to <http://www.insurance.ca.gov>. Find the heading "QUICK LINKS" in blue in the middle of the screen. Click on the subheading "Legal Information" under the "QUICK LINKS" heading, then click on the

heading "Proposed Regulations." When the search field appears, enter 'RH01013336' (the Department's regulation file number for these regulations).

MODIFIED LANGUAGE

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

NOTICE IS HEREBY GIVEN that the Board for Barbering and Cosmetology (hereinafter referred to as "the Board") proposes to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 400 R Street, Suite 1030, Sacramento, California, at 9:AM, on February 28, 2005. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on February 28, 2005 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 7312 of the Business and Professions Code, and to implement, interpret or make specific Section 7331 of said Code, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Section 911. Many other states allow licensure by endorsement. If individuals are licensed in another state and meet specified criteria, they can be issued a license without having to take the complete licensing examination. Senate Bill 362 (Figueroa,

Chapter 788, Statutes of 2003) authorized the Board to issue a license by endorsement to an applicant who is licensed in another state.

The proposed language is necessary to implement the licensure by endorsement process allowed by newly enacted section 7331.

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed regulatory action has no cost impact in terms of increased expenses and/or savings to state agencies and/or federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies:

None

Local Mandate:

None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement:

None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. In fact, it may assist businesses by streamlining the licensing process for applicants from out-of-state.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board of Barbering and Cosmetology is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs:

None

EFFECT ON SMALL BUSINESS

The Board of Barbering and Cosmetology has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board for Barbering and Cosmetology at 400 R Street, Suite 5100, Sacramento, California 95814.

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kristy Underwood
Address: 400 R Street, Suite 5100,
Sacramento, California 95814
Telephone No.: (916) 324-8947
Fax No.: (916) 445-8893
E-Mail Address: kristy_underwood@dca.ca.gov

The backup contact person is:

Name: Terri Ciaui
Address: 400 R Street, Suite 5100,
Sacramento, California 95814
Telephone No.: (916) 332-1101
Fax No.: (916) 445-8893
E-Mail Address: terri_ciaui@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.barbercosmo.ca.gov.

**TITLE 16. BOARD OF BARBERING
AND COSMETOLOGY**

NOTICE IS HEREBY GIVEN that the Board for Barbering and Cosmetology (hereinafter referred to as "the Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held

at 400 R Street, Suite 1030, Sacramento, California, at 9:AM, on February 28, 2005. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on February 28, 2005 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 7338, 7340, 7341, and 7342 of the Business and Professions Code, and to implement, interpret or make specific Sections 7312 and 7340 of said Code, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Business and Professions Code Section 139 requires that the Board of Barbering and Cosmetology (Board) follow the policy of the Department of Consumer Affairs (DCA) for examination validation. The objective of this policy is to establish guidelines for the development and administration of job-related examinations. The DCA has established the Office of Examination Resources (OER) as the designated office to oversee these functions including providing services for examination development, occupational analysis, standard setting, and program review and evaluation.

This proposed language to amend Section 932 of Title 16 of California Code of Regulations regarding passing grades in examinations, was developed to address requirements in Senate Bill 362 (Figueroa, Chapter 788, Statutes of 2003). It requires the Board to conduct various studies and reviews and to report the findings and recommendations to the DCA and the Joint Legislative Sunset Review Committee no later than September 1, 2005. In particular, the statute requires that the Board, in conjunction with the Department's OER, assess the validity of aggregate scoring for Board applicants.

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed regulatory action has approximately minimal cost impact in terms of increased expenses and/or savings to state agencies and/or federal funding to the state. The cost impact can be absorbed within existing resources.

Nondiscretionary Costs/Savings to Local Agencies:

None

Local Mandate:

None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement:

None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

- (A) The December 15, 2003 Board Meeting Minutes, and
- (B) Letter from the Department of Consumer Affairs' Office of Examination Resources, dated December 12, 2003.

Impact on Jobs/New Businesses:

The Board for Barbering and Cosmetology has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board for Barbering and Cosmetology is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs:

None

EFFECT ON SMALL BUSINESS

The Board for Barbering and Cosmetology has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the

action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board for Barbering and Cosmetology at 400 R Street, Suite 5100, Sacramento, California 95814.

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kristy Underwood
Address: 400 R Street, Suite 5100,
Sacramento, California 95814
Telephone No.: (916) 324-8947
Fax No.: (916) 445-8893
E-Mail Address: kristy_underwood@dca.ca.gov

The backup contact person is:

Name: Terri Cia
Address: 400 R Street, Suite 5100,
Sacramento, California 95814
Telephone No.: (916) 323-1101
Fax No.: (916) 445-8893
E-Mail Address: terri_ciau@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.barbercosmo.ca.gov.

TITLE 16. RESPIRATORY CARE BOARD

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF PROPOSED CHANGES

NOTICE IS HEREBY GIVEN that the Respiratory Care Board is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Respiratory Care Board of California at 444 North 3rd Street, Suite 270, in Sacramento, California at 9:00 a.m. on March 1, 2005. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Respiratory Care Board at its office not later than 5:00 p.m. on February 28, 2005, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section 3722 of the Business and Professions Code, and to implement, interpret or make specific section 3719.5 of said Code, the Respiratory Care Board is considering changes to Division 13.6 of Title 16 of the California Code of Regulations as provided under Informative Digest/Policy Statement Overview. Other related sections referenced include Business and Professions Code sections 3719, 3730 and 3751.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 3719.5 states that the board may require successful completion of one or more professional courses offered by the board, the American Association for Respiratory Care, or the California Society for Respiratory Care as part of continuing education, prior to initial licensure and prior to consideration of a reinstatement petition.

This proposal would establish the law and professional ethics course as a prerequisite to licensure and reinstatement, as a continuing education requirement during every other renewal cycle, and would define the course criteria.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State: NONE

Nondiscretionary Costs/Savings to Local Agencies: NONE

Local Mandate: NONE

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: NONE

Business Impact: The Respiratory Care Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Respiratory Care Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Respiratory Care Board are:

The Respiratory Care Board has determined that applicants for licensure and petitioners for reinstatement will be subject to a fee, as charged by providers, for the law and professional ethics course required prior to licensure and license reinstatement, respectively.

Licensed respiratory care practitioners will also be subject to an ongoing fee, as charged by providers, for the law and professional ethics course required prior to license renewal, once every four years. It should be noted that the continuing education units earned for completion of the law and professional ethics course will be inclusive of the fifteen (15) continuing education units already required for license renewal. Therefore, costs for this required course may be less than, equal to, or more than, fees charged for other courses that would have been taken as part of the minimum required hours for CE.

The Respiratory Care Board is not aware of any cost impacts that a business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: NONE

EFFECT ON SMALL BUSINESS

The Respiratory Care Board has determined that the proposed regulations will not affect small businesses. The American Association for Respiratory Care and

the California Society for Respiratory Care are the only entities who will be approved to develop and provide the law and professional ethics course. Neither the American Association for Respiratory Care nor the California Society for Respiratory Care are small businesses.

CONSIDERATION OF ALTERNATIVES

The Respiratory Care Board must determine that no reasonable alternative which is considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in the Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Respiratory Care Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing by accessing the board's website at www.rcb.ca.gov or upon request from the Respiratory Care Board at 444 North 3rd Street, Suite 270, Sacramento, CA 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person name below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Christine Molina, Staff Services Manager
Respiratory Care Board of California
444 North 3rd Street, Suite 270
Sacramento, CA 95814
(916) 323-9983
rcbinfo@dca.ca.gov

The backup contact person is:

Stephanie Nunez, Executive Officer
Respiratory Care Board of California
444 North 3rd Street, Suite 270
Sacramento, CA 95814
(916) 323-9983

Inquiries concerning the substance of the proposed regulations may be addressed to:

Christine Molina, Staff Services Manager
Respiratory Care Board of California
444 North 3rd Street, Suite 270
Sacramento, CA 95814
(916) 323-9983
rcbinfo@dca.ca.gov

TITLE 23. WATER RESOURCES CONTROL BOARD

DIVISION 3. CHAPTER 24. GRANT AND LOAN PROGRAMS

NOTICE OF PROPOSED RULEMAKING

ARTICLE 2. REPLACING, REMOVING, OR UPGRADING PETROLEUM UNDERGROUND STORAGE TANKS GRANT AND LOAN PROGRAM

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (SWRCB) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding this proposed action.

PROPOSED REGULATORY ACTION

The SWRCB proposes to adopt sections 3420-3428, article 2, chapter 24, division 3, title 23 of the California Code of Regulations to conduct a grant and loan program to assist small businesses in replacing, removing, or upgrading petroleum underground storage tanks, or making other specified improvements to such tanks, to meet applicable local, state, or federal standards (RUST program).

These proposed regulations for the RUST program implement chapter 6.76 (commencing with section 25299.100) of division 20 of the Health and Safety Code. Pursuant to section 25299.108 of that chapter, the SWRCB was required to adopt the proposed regulations as emergency regulations, and the Office of Administrative Law (OAL) was to consider the regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Accordingly, the SWRCB approved a resolution, dated November 18, 2004, adopting the proposed regulations as emergency regulations. Emergency

rulemaking procedures were followed, and the emergency regulations became effective December 3, 2004.

Section 25299.108 of chapter 6.76 states further that the emergency regulations shall be repealed 180 days after their effective date unless the SWRCB complies within this time period with the additional statutory rulemaking requirements set forth in Government Code sections 11346.2 through 11347.3. The SWRCB is providing this Notice of Proposed Rulemaking in compliance with these additional rulemaking requirements.

PUBLIC HEARING

A public hearing has not been scheduled for this proposed action. However, as provided in Government Code section 11346.8, any interested person, or his or her duly authorized representative, may request a public hearing if the request is submitted in writing in the manner described below to the SWRCB no later than fifteen (15) days prior to the close of the written comment period. If a request for a public hearing is made, the SWRCB shall, to the extent practicable, provide notice of the time, date, and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the SWRCB. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

WRITTEN COMMENT PERIOD

The SWRCB requests comments from interested persons to present any statements, arguments, or contentions relating to the proposed regulatory action. The comments must be submitted in writing and received by the SWRCB before the close of the written comment period in order to be considered by the SWRCB before it adopts the proposed regulations. The written comment period closes at 5:00 p.m., Pacific Standard Time, on February 28, 2005.

Comments may be hand-delivered, or submitted by U.S. mail, facsimile transmission, or electronic mail. Comments delivered by hand should be taken to 1001 I Street, Sacramento, California, and addressed to the attention of Ms. Kelly Valine, Division of Financial Assistance, 17th Floor, State Water Resources Control Board. Comments submitted by U.S. mail should be addressed as follows:

Ms. Kelly Valine, Loan Officer
RUST Program
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120

Comments submitted by facsimile should be sent to the following facsimile phone number: (916) 327-7469. Comments submitted by electronic mail should be sent to the following e-mail address: kvaline@waterboards.ca.gov

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, please leave a voicemail message with Ms. Kelly Valine at (916) 327-6976 giving your name, address, and telephone number. If you would like to be notified electronically, please so indicate in the voicemail message and give your e-mail address in addition to the other information requested. Individuals who receive this notice by mail are already on the mailing list.

AUTHORITY AND REFERENCE

Health and Safety Code section 25299.108 authorizes the SWRCB to adopt regulations necessary to implement and make specific chapter 6.76 of division 20 of the Health and Safety Code, commencing with section 25299.100. References to specific code sections are identified in the proposed regulations for the RUST program.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Chapter 6.76 of division 20 of the Health and Safety Code authorizes the SWRCB to conduct a program to make grants and loans to small businesses to undertake certain actions with respect to petroleum underground storage tanks (RUST program). The RUST program provides grants for specified improvements to petroleum underground storage tanks and provides loans for replacing, removing, upgrading, or performing corrective action related to petroleum underground storage tanks.

The objective of the proposed regulations is to implement and make specific the RUST program by defining which small businesses are eligible for grants and loans and what submittals are required of applicants seeking grants and loans, and by describing the terms of loan agreements and the SWRCB administrative process for the award of RUST grants and loans.

The RUST program, enacted in chapter 6.76 of division 20 of the Health and Safety Code, is similar to, but independent of, a recently discontinued underground storage tank grant and loan program previously administered by the former California state agency known as the Technology, Trade and Commerce Agency (TTCA). Regulations promulgated under the former TTCA program and set forth at California Code of Regulations, title 10, sections 5900 through 5906, became inoperative on January 1, 2004, upon the repeal of that program.

FISCAL IMPACT ESTIMATES

Mandate on Local Agencies or School Districts:

The SWRCB has determined that the proposed regulations would not impose a mandate on local agencies or school districts. The SWRCB has determined that the proposed regulations will not result in any additional cost or savings to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code.

Cost or Savings to any State Agency: The SWRCB has determined that there is no additional cost or savings imposed on state agencies as a result of the proposed regulations.

Other Non-discretionary Cost or Savings Imposed on Local Agencies: The SWRCB has determined that there is no cost or savings imposed on local agencies as a result of the proposed regulations.

Cost or Savings in Federal Funding to the State: The SWRCB has determined that there is no cost or savings in Federal funding to the State as a result of the proposed regulations.

ECONOMIC IMPACT ESTIMATES

Statement of Significant Statewide Adverse Economic Impact Directly Affecting Business: The SWRCB has made the initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impacts On Representative Private Persons Or Businesses: The SWRCB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect On Creation Or Elimination Of Jobs within California: The SWRCB has determined that the proposed regulatory action will have no effect on the creation or elimination of jobs within California.

Effect On Creation Of New Businesses Or Elimination Of Existing Businesses within California: The SWRCB has determined that the proposed regulatory action will have no effect on the creation of new businesses or the elimination of existing businesses within California.

Effect On Expansion Of Businesses Currently Doing Business within California: The SWRCB has determined that the proposed regulatory action will have no effect on the expansion of businesses currently doing business within California.

Effect on Small Businesses: The SWRCB has determined that the proposed regulatory action does affect small businesses in that they will derive a

benefit from the enforcement of the regulation. Small businesses will now be able to participate in the grant and loan program created by the new RUST program.

Consideration Of Alternatives: In accordance with Government Code section 11346.5, subdivision (a)(13), the SWRCB must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The SWRCB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at any hearing that may be requested or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The SWRCB has prepared an Initial Statement of Reasons for the proposed action. The Initial Statement of Reasons includes the specific purpose of each regulation proposed for adoption and the rationale for the SWRCB's determination that each adoption is reasonably necessary to carry out the purpose for which the regulation is proposed. The Initial Statement of Reasons, the express terms of the proposed regulations, and all information on which the proposals are based are available from the agency contact person named in this notice.

The rulemaking file is available for inspection and copying throughout the rulemaking process at the Division of Financial Assistance, 1001 I Street, 17th floor, Sacramento, California. As of the date that this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations, and the Initial Statement of Reasons.

The rulemaking file will also be published and made available at the following Division Internet website:

<http://www.waterboards.ca.gov/cwphome/ustcf/rust.html>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any hearing that is requested and considering all timely and relevant comments received, the SWRCB may adopt the proposed regulations substantially as described in this notice. If the SWRCB makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before the SWRCB adopts the regulations as modified. A copy of any modified regulations may be obtained by contacting Ms. Kelly Valine, the primary contact

person identified below. The SWRCB will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy may also be accessed on the Division website previously listed.

CONTACT PERSONS

Inquires concerning the proposed action may be directed to:

Ms. Kelly Valine, Loan Officer
RUST Program
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120
Phone: (916) 327-6976
Email address: kvaline@waterboards.ca.gov

The backup contact person for these inquiries is:

Ms. Christine Gordon, Staff Services Analyst
Underground Storage Tank Cleanup Fund
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120
Phone: (916) 341-5835
Email address: cgordon@waterboards.ca.gov

Questions regarding the substance of the proposed regulations may be directed to either contact person.

Please direct to Ms. Kelly Valine requests for copies of the proposed text (the "express terms") of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or any other information upon which this proposed rulemaking is based.

**TITLE 28. DEPARTMENT OF
MANAGED HEALTH CARE**

ACTION

Notice of Proposed Rulemaking
Title 28, California Code of Regulations

SUBJECT

Independent Medical Review Medicare Language
Title, Control #2004-0424, Amending Section
1300.74.30 in Title 28, California Code of Regulations

PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (Director) proposes to adopt regulations under the Health Care Service Plan Act of 1975 (Act) relating to Independent Medical Review System by amending section 1300.74.30 in title 28, California Code of Regulations. Before undertaking the action, the Director will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may request in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received in writing by the Department of Managed Care's (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative may submit written statements, arguments or contentions (hereafter referred to as comments) relevant to the proposed regulatory action by the Department. Comments must be received by the Office of Legal Services, Department of Managed Health Care, by 5 p.m. on February 28, 2005, which is hereby designated as the close of the written comment period.

Comments may be transmitted by regular mail, FAX or email:

Email: regulations@dmhc.ca.gov
Mail Delivery: Regulation Coordinator
Department of Managed
Health Care
Office of Legal Services
980 9th Street, Suite 500
Sacramento CA 95814
Fax: (916) 322-3968

Please note, if comments are sent via email or fax, there is no need to send the same comments by mail delivery. All comments, including email, fax transmissions or mail delivery should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited. Please address all comments to the Department of Managed Health Care, Office of Legal Services.

Inquiries regarding the substance of the proposed regulation described in this notice may be directed to Elaine Paniewski, Associate Governmental Program Analyst, at (916) 322-6727. All other inquiries concerning the action described in this notice may be directed to Phillis Soresi, Staff Service Analyst, at (916) 322-6727.

CONTACTS

Please identify the action by using the Department's regulation control number and title, **2004-0424 Independent Medical Review Medicare Language** in any of the above inquiries.

AVAILABILITY OF DOCUMENTS

Materials regarding the proposed regulations (including this public notice, the proposed regulations, and the Initial Statement of Reasons) are available via the internet. The documents may be accessed at

<http://www.hmoHELP.ca.gov/library/regulations/> under the heading Proposed Regulations. As required by the Administrative Procedure Act, the Department's Office of Legal Services maintains the rulemaking file. At the present time, the rulemaking file consists of the text of the regulations, the initial statement of reasons, and the notice. The rulemaking file is available for public inspection at the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Suite 500, Sacramento, CA 95814. To view the file, please call to make an appointment: (916) 322-6727.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Health and Safety code sections 1344 and 1346 vest the Director with the power to administer and enforce the provisions of the Act.

California Health and Safety Code section 1344 mandates that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act. Furthermore, the Director may waive any requirement of any rule or form in situations where in the Director's discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter. In addition, the Director may honor requests from interested parties for interpretive opinions.

California Health and Safety Code section 1346 vests in the Director the power to administer and enforce the Act, including but not limited to recommending and proposing the enactment of any legisla-

tion necessary to protect and promote the interests of plans, subscribers, enrollees, and the public.

In 2001, the Central District Court of California enjoined the Department of Managed Health Care from 1) enforcing all California state standards specifically preempted by 42 U.S.C. § 1395w-26 (b)(3) and 2) from enforcing or attempting to enforce any State law, regulation, order or requirement of any and all types subject to preemption by 42 U.S.C. § 1395w-26 (b)(3) including but not limited to the specifically preempted laws, (*California Association of Health Plans v. Zingale*, (Case No. 00-06803 RSWL (Mcx), UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, 2001 U.S. Dist). Specifically listed in the order were Health and Safety Code sections 1370.4, 1374.30 and 1374.33, which this regulation was based upon.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the Act) amended the Social Security Act, including 42 U.S.C. § 1395w-26 (b)(3). (P.L. 108-173). The amendment to 42 U.S.C. § 1395w-26 clarifies that those provisions which conflict with or are occupied by federal law, all state laws creating standards for Medicare + Choice or Medicare Advantage plans are preempted except for two carve outs related to licensure laws and plan solvency.

Amending section 1300.74.30 in Title 28, California Code of Regulations is necessary in order to insure the regulation does not conflict with Federal Law and to avoid confusion among health care service plans and enrollees.

AUTHORITY

Health and Safety Code sections 1342, 1344, and 1346

REFERENCE

Health and Safety Code section 1370.4, 1374.30 and 1374.33

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulation(s) should be addressed to Elaine Paniewski, Staff Service Analyst, at (916) 322-6727. The Director will accept written, faxed or e-mailed comments on the modified regulation(s) for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Elaine Paniewski, Staff Service Analyst, at (916) 322-6727 or available on the internet at

<http://www.hmohelp.ca.gov/library/regulations/>
under the heading Proposed Regulations.

ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified or brought to its attention, would be more effective in carrying out the purpose for which the above action is proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the public comment period.

FISCAL IMPACT STATEMENT

- Mandate on local agencies and school districts: None
- Cost or Savings to any State Agency: None
- Direct or Indirect Costs or Savings in Federal Funding to the State: None
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None
- Costs to private persons or businesses directly affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: None
- Other non-discretionary cost or savings imposed upon local agencies: None

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations will have no impact on housing costs.

The Department has determined that the regulations do not affect small businesses. Health care service plans are not considered a small business under Government Code section 11342(h)(2).

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs within the State of California.

The Department has determined that the regulations will not significantly affect the creation of new businesses, or the elimination of existing businesses within the State of California.

The Department has determined that the regulations will not significantly affect the expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses currently doing business within the State of California.

**FINDING REGARDING
REPORTING REQUIREMENT**

Government Code section 11346.3(c) provides as follows:

“No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.”

All reporting requirements included in these regulations do apply to businesses because the Department has determined that the regulations are necessary to maintain the health, safety and welfare of the people of the State of California.

**AVAILABILITY OF INITIAL STATEMENT OF
REASONS, TEXT, AND RULEMAKING FILE:**

The Department has prepared and has available for public review the following documents:

1. Initial Statement of Reasons
2. Text of proposed regulations
3. All information upon which the proposal is based (rulemaking file)

This information is available by request at the Department of Managed Health Care, Office of Legal Services, 980 9th St., Sacramento, CA 95814, or on our website at

<http://www.hmohelp.ca.gov/library/regulations/>,
under the heading, Proposed Regulations.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

CESA CONSISTENCY DETERMINATION FOR Prichard Lake Restoration Project Sacramento County

The Department of Fish and Game ("Department") received a notice on December 17, 2004 that the Sacramento County Airport System ("SCAS") proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of restoration activities on 42.7 acres of wetland habitat at and around Prichard Lake in Sacramento County. The activities will temporarily impact the 9.7 acre Prichard Lake site and the 33 acres wetland compensation site.

The U.S. Fish and Wildlife Service, on May 27, 2004, issued to the U.S. Army Corps of Engineers ("Corps"), a no jeopardy federal biological opinion (1-1-04-F-0030) which considers the Federally and State threatened giant garter snake (*Thamnophis gigas*), and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, the Corps and SCAS are requesting a determination that federal biological opinion 1-1-04-F-0030 is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, SCAS will not be required to obtain an incidental take permit for the proposed project.

**DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**NOTICE OF PROPOSED
ADMINISTRATIVE SETTLEMENT
REQUEST FOR PUBLIC COMMENT**

**Former Kennington Property
3209 Humboldt Street
Los Angeles, California**

In accordance with Health and Safety Code sections 25300 et seq. (the Hazardous Substances Account Act), 58009, and 58010, the Department of Toxic Substances Control (DTSC) has the authority to enter into agreements whereby DTSC covenants not to sue or to assert claims for environmental remediation against prospective purchasers of environmentally impacted properties, if such agreements are sufficiently in the public interest.

Notice is hereby given that the Department of Toxic Substances Control (DTSC) proposes to execute an Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the Former Kennington Property Site (Site). The proposed Prospective Purchaser Agreement (PPA) would resolve certain potential claims of DTSC against TDP Properties, LLC (the Purchaser). The Purchaser plans to acquire the Former Kennington Property (Property), currently owned by ITT Industries, Inc., (ITT) and previously operated by ITT Cannon Electric, located at 666 Dyer Road, Santa Ana, California. Closing of escrow will occur following DTSC's issuing a completion letter with respect to the soils remediation component of the Remedial Action Plan (RAP) that DTSC approved on October 8, 2003. The benefits and obligations specified in the PPA will not become effective unless closing occurs.

ITT has implemented the RAP, and will enter into an Operation and Maintenance Agreement to perform soil and groundwater Operation and Maintenance in accordance with a DTSC-approved Operation and Maintenance Plan. In addition, ITT will execute a Covenant to Restrict Use of Property—Environmental Restriction (Covenant), which will, among other things, impose restrictions limiting future use of the Property, protect groundwater wells or other remediation equipment or facilities (if any are installed), restrict drilling of new wells, and implement soil management. The Covenant will also impose obligations for reporting and payment requirements for DTSC's costs associated with administering the Covenant. The Purchaser has agreed, among other things, to provide access to the Site, cooperate in the implementation of further response activities, and comply with the Covenant. The Purchaser will receive

a covenant not to sue from DTSC concerning claims arising out of the existing contamination or any other response activities at the Site.

The PPA is in the public interest because it will allow the Property to be developed and, at the same time, protect human health by placing the Covenant on the Property. The Covenant prohibits residential or residential-type uses to protect against exposure to contamination that remains on the Property above levels suitable for unrestricted use, while allowing for construction of new commercial or industrial buildings. Developing the Property is expected to create roughly three hundred (300) temporary jobs during the construction phase and about forty (40) permanent jobs. The project will generate over \$500,000 in government project fees and nearly \$92,000 annually in new property taxes.

DTSC is holding a 30-day public comment period on this PPA. Written comments on this proposed settlement must be submitted by 5 p.m. on Monday, February 14, 2005. To insure timely receipt by DTSC, you are requested to transmit your comments by facsimile or overnight mail to:

Sayareh Amir, Chief
Attention: Ms. Tina Diaz
Southern California Cleanup Operations Branch—
Glendale Office
Site Mitigation and Brownfields Reuse Program
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201
Tel. (818) 551-2862
Fax: (818) 551-2832

The proposed PPA and additional background documents relating to the settlement are available for public inspection at the Glendale Regional Office of DTSC at 1011 North Grandview Avenue, Glendale, California 91201-2205. During the public comment period, the PPA may also be examined on the DTSC Website at:

<http://www.dtsc.ca.gov/PublicNotices/Kennington>

If you have any questions regarding this PPA, or wish to obtain a copy, please contact Ms. Diaz.

DECISION NOT TO PROCEED

**DIVISION OF LABOR
STANDARDS ENFORCEMENT**

Pursuant to Government Code Section 11347, the Division of Labor Standards Enforcement (DLSE) hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register, December 31, 2004

(Register 2004, 53-Z, p. 1770, OAL File No. Z-04-1220-01). The proposed rulemaking concerned meal and rest periods.

However, the DLSE will publish a new notice on the same rulemaking proposal on January 14, 2005 (Register 2005, 2-Z).

Comments received in connection with the December 31, 2004 notice will be included for consideration in the January 14, 2005 notice.

Any interested person with questions concerning this rulemaking should contact Allen Perlof at either (415) 703-4810 or by e-mail at: DLSE2@dir.ca.gov.

The DLSE will also publish this Notice on its website.

Comments may also be delivered in person or by courier to the above address. It is requested, but not required, that written comments and supporting documentation be transmitted via email addressed to: coshita@oehha.ca.gov. In order to be considered, comments must be postmarked (if sent by mail) or received at OEHHA (if hand-delivered, sent by FAX, or transmitted electronically) by 5:00 p.m. on Monday, January 31, 2005.

SUMMARY OF REGULATORY ACTIONS

PROPOSITION 65

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

CORRECTION NOTICE TO: NOTICE OF INTENT TO LIST A CHEMICAL

On December 31, 2004, the Office of Environmental Health Hazard Assessment (OEHHA) published a public notice in the *California Regulatory Notice Register* (Register 04, No. 53-Z) announcing its intent to list a chemical, 2,4-hexadienal, under the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as Proposition 65), codified at Health and Safety Code section 25249.5 et seq. The close of the 30-day public comment period was incorrectly stated as "Friday, January 30, 2005." The correct deadline date is Monday, January 31, 2005.

Anyone wishing to provide comments as to whether the listing of 2,4-hexadienal meets the criteria for listing provided in Title 22, California Code of Regulations, section 12306 should send written comments in triplicate, along with any supporting documentation, by mail or by fax to:

Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF EQUALIZATION Rules of Practice

This regulatory action amends the welfare exemption claim filing requirements and hearing procedures for property tax welfare exemption appeals to conform to recent statutory changes.

Title 18
California Code of Regulations
AMEND: 5060, 5061, 5062, 5063, 5064
Filed 01/04/05
Effective 02/03/05
Agency Contact: Diane G. Olson (916) 322-9569

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS School Program Requirements for VN and PTs

In this regulatory action, the Board of Vocational Nursing and Psychiatric Technicians amends regulations pertaining to school program requirements for vocational nurses and psychiatric technicians.

Title 16
California Code of Regulations
AMEND: 2526, 2529, 2532, 2533, 2534, 2581, 2584, 2586, 2587, 2588, 2588.1
Filed 12/29/04
Effective 01/28/05
Agency Contact: Angela Hole (916) 263-7842

DEPARTMENT OF CORRECTIONS**Inmate Restitution Fine & Direct Order Collections**

This certificate of compliance makes permanent the emergency regulations previously adopted by the Department (OAL file no. 04-0607-01EON) which specifies the amount to be deducted from an inmate's trust account deposits or wages to pay for any court ordered restitution fine or direct order of restitution.

Title 15

California Code of Regulations

AMEND: 3097

Filed 12/30/04

Effective 12/30/04

Agency Contact:

Randy Marshall (916) 324-6776

DEPARTMENT OF CORRECTIONS**Work/Training Incentive Groups, Rule Violations**

This Certificate of Compliance implements bridging education programs designed to assist inmates in returning to society by amending provisions concerning day-for-day credit, inmate discipline, and privilege group designations. (Previous OAL file ## 03-1221-01 EON and 04-0604-02 EON)

Title 15

California Code of Regulations

ADOPT: 3000 AMEND: 3005, 3044, 3062, 3313, 3314, 3315, 3323, 3376 REPEAL: 3045.1

Filed 12/29/04

Effective 12/29/04

Agency Contact:

Randy Marshall (916) 324-6776

DEPARTMENT OF DEVELOPMENTAL SERVICES**Family Cost Participation Program**

Implement the Family Cost Participation Program pursuant to Welfare and Institutions Code section 4783.

Title 17

California Code of Regulations

ADOPT: 50243, 50245, 50247, 50249, 50251, 50253, 50255, 50257, 50259, 50261, 50262, 50263, 50265

Filed 12/31/04

Effective 01/01/05

Agency Contact:

Larry Lipsmeyer (916) 654-3355

DEPARTMENT OF HEALTH SERVICES**Fee Increase for Newborn Screening Program**

This regulatory action increases the fees for the Newborn Screening Program. This action is exempt from OAL review pursuant to Health and Safety Code section 124911.

Title 17

California Code of Regulations

AMEND: 6508

Filed 12/31/04

Effective 12/31/04

Agency Contact: Don Lee (916) 440-7673

DEPARTMENT OF HEALTH SERVICES**Medi-Cal Estate Recovery Program Definitions**

This certificate of compliance makes permanent the Department's prior emergency regulatory action (OAL file no. 04-0723-05E) that provided clarification regarding the Department's authority to recover from annuities by specifying annuities in the definition of "estate," but this will only affect annuities purchased on or after September 1, 2004, as part of the Department's recovery of Medi-Cal expenditures from the estates of deceased Medi-Cal beneficiaries.

Title 22

California Code of Regulations

AMEND: 50960, 50961

Filed 01/03/05

Effective 01/03/05

Agency Contact:

Lynette Cordell (916) 650-6827

DEPARTMENT OF JUSTICE**Surety Bond of Motorcycle Dealer**

This is a Surety Bond form for Motorcycle Dealer, Motorcycle Lessor-Retailer, All Terrain Vehicle Dealer or Wholesale-Only Dealer (less than 25 vehicles per year). The form has been approved by the Attorney General and is being submitted for printing only.

Title 11

California Code of Regulations

ADOPT: 51.22

Filed 01/05/05

Effective 01/05/05

Agency Contact: Anne M. Burr (415) 703-1403

DEPARTMENT OF JUSTICE**Milk Handler's Bond**

The Department of Justice is amending its Milk Handler's Bond referenced at title 11, section 26.4, California Code of Regulations.

Title 11

California Code of Regulations

AMEND: 26.4

Filed 01/03/05

Effective 02/02/05

Agency Contact: Anne M. Burr (415) 703-1403

DEPARTMENT OF JUSTICE**Registration Services Surety Bond**

The Department of Justice is amending its Registry Service Surety Bond referenced at title 11, section 51.17, California Code of Regulations.

Title 11
California Code of Regulations
AMEND: 51.17
Filed 01/03/05
Effective 02/02/05
Agency Contact: Anne M. Burr (415) 703-1403

DIVISION OF WORKERS COMPENSATION
Permanent Disability Rating Schedule/Related Regulations

This emergency regulatory action adopts a permanent disability rating schedule for dates of injuries on or after January 1, 2005 and makes other changes intended to implement Senate Bill 899 (ch. 34, stats. 2004). New section 10151.5, which was originally included in this emergency filing, was withdrawn by the adopting agency on December 31, 2004.

Title 8
California Code of Regulations
ADOPT: 9785.4, AMEND: 9725, 9726, 9727, 9785, 9785.2, 9785.3, 9805, 10150, 10152, 10156, 10158, 10160, 10163, 10165.5 REPEAL: 10151, 10154
Filed 12/31/04
Effective 01/01/05
Agency Contact:
Minerva Krohn (415) 703-4667

DIVISION OF WORKERS COMPENSATION
Workers' Compensation—Independent Medical Review

This emergency regulatory action deals with the independent medical review component of the medical provider network program, including defining terms, establishing the requirements to serve as an independent medical reviewer (IMR), the contract application procedure, the required forms for the IMR contract application and the injured employee's application to request an IMR, the procedures for requesting a IMR, and the procedures for an in-person examination.

Title 8
California Code of Regulations
ADOPT: 9768.1, 9768.2, 9768.3, 9768.4, 9768.5, 9768.6, 9768.7, 9768.8, 9768.9, 9768.10, 9768.11, 9768.12, 9768.13, 9768.14, 9768.15, 9768.16, 9768.17
Filed 12/31/04
Effective 01/01/05
Agency Contact:
Destie Overpeck (415) 703-4659

FAIR POLITICAL PRACTICES COMMISSION
Contribution and Expenditure Limit COLA Adjustment

This action revises the dates and amounts concerning the adjusted contribution limit and voluntary expenditure ceiling amounts for various types of political candidates.

Title 2
California Code of Regulations
AMEND: 18545
Filed 12/31/04
Effective 01/01/05
Agency Contact: Hal Dasinger (916) 322-5660

FAIR POLITICAL PRACTICES COMMISSION
Inclusion of Registered Domestic Partners

This action includes registered domestic partners recognized by state law under the term "spouse."

Title 2
California Code of Regulations
ADOPT: 18229
Filed 12/31/04
Effective 01/01/05
Agency Contact:
Natalie Bocanegra (916) 322-5660

FAIR POLITICAL PRACTICES COMMISSION
Gift Limit COLA Adjustments

The Fair Political Practices Commission is amending sections 18703.4, 18730, 18940.2, 18942.1, and 18943, title 2, California Code of Regulations.

Title 2
California Code of Regulations
AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
Filed 01/04/05
Effective 01/01/05
Agency Contact: Hal Dasinger (916) 322-5660

NEW MOTOR VEHICLE BOARD
ACP Fee 2004/05 Billing

The New Motor Vehicle Board is amending section 553.70, title 13, California Code of Regulations, pertaining to the arbitration certification program fee collection for calendar year 2003. The New Motor Vehicle Board administers the collection of fees from new motor vehicle manufacturers and distributors to fully fund the arbitration certification program.

Title 13
California Code of Regulations
AMEND: 553.70
Filed 01/04/05
Effective 01/04/05
Agency Contact:
Dawn K. Kindel (916) 445-1888

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Personal Protective Equipment

This regulatory action requires that employers ensure that all personal equipment, whether owned by the employer or the employee, meet applicable safety standards.

Title 8
California Code of Regulations
AMEND: 3380(d)
Filed 12/30/04
Effective 01/29/05
Agency Contact: Marley Hart (916) 274-5721

**SANTA MONICA BAY RESTORATION
COMMISSION**
Conflict of Interest Code

The Santa Monica Bay Restoration Commission is adopting its conflict of interest code with the citation of Title 2, Division 8, Chapter 108, Section 59530, California Code of Regulations. The adoption was approved for filing by the Fair Political Practices Commission on November 4, 2004.

Title 2
California Code of Regulations
ADOPT: Division 8, Chapter 108, Section 59530.
Filed 01/03/05
Effective 02/02/05
Agency Contact: Scott Valor (213) 576-6643

STATE WATER RESOURCES CONTROL BOARD
Amendment to Los Angeles Basin Plan

This basin plan amendment adopts a Total Maximum Daily Load (TMDL) for bacteria at Los Angeles Harbor (Inner Cabrillo Beach and Main Ship Channel, including the inner Harbor). Numeric targets are expressed as days of exceedance of bacteria objectives contained in the Basin Plan. Targets are set for nonpoint sources, point sources, and for discharges from general National Pollutant Discharge Elimination System permits, general industrial storm water permits, and general construction storm water permits. The targets apply to three seasons: summer dry-weather (April 1 to October 31), winter dry-weather (November 1 to March 31, and wet weather (days with 0.1 inch or more of rain and the three days following the rain event); and to monitoring sites specified in the Basin Plan.

Title 23
California Code of Regulations
ADOPT: 3939.12
Filed 01/05/05
Effective 01/05/05
Agency Contact: Greg Frantz (916) 341-5553

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN AUGUST 18, 2004
TO JANUARY 5, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and

Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

10/13/04 ADOPT: 1015, 1019, 1048, 1050
AMEND: 1000, 1002, 1004, 1006, 1008, 1012, 1014, 1016, 1018, 1020, 1022, 1024, 1026, 1027, 1028, 1030, 1032, 1034, 1038, 1040, 1042, 1044, 1046

Title 2

01/04/05 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
01/03/05 ADOPT: Division 8, Chapter 108, Section 59530.
12/31/04 ADOPT: 18229
12/31/04 AMEND: 18545
12/20/04 ADOPT: 1859.71, 1859.78.1 AMEND: 1859.2, 1859.73.2, 1859.79.2, 1859.82, 1859.83
12/16/04 ADOPT: 1859.51.1, 1859.70.2 AMEND: 1859.2, 1859.51, 1859.70, 1859.103,
12/06/04 AMEND: 1859.2, 1859.51
11/30/04 AMEND: Div. 8, Ch. 29, Sec. 50000
11/24/04 AMEND: 1866, 1866.1, 1866.2, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.5, 1866.5.1, 1866.7, 1866.13
11/22/04 AMEND: 58700
11/18/04 AMEND: 561, 561.1, 561.2, 561.4, 561.5, 561.6, 561.7, 561.8, 561.9, 561.10, 561.11, 561.12, 561.13, 561.14
11/10/04 ADOPT: 1859.163.1, 1859.163.2, 1859.163.3, 1859.164.2 1859.167.1
AMEND: 1859.2, 1859.145, 1859.145.1, 189.160, 1859.161, 1859.162, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.167, 1859.168, 1859.171
11/09/04 AMEND: 18530.8
11/04/04 AMEND: 1859.71.2, 1859.78.4
11/02/04 ADOPT: 1859.123.1 AMEND: 1859.2, 1859.73.1, 1859.81, 1859.83, 1859.90, 1859.120, 1859.121, 1859.122, 1859.122.1, 1859.122.2, 1859.123, 1859.124, 1859.124.1, 1859.125, 1859.125.1, 1859.126, 1859.127, 1859.129, 1859.130
11/02/04 AMEND: 1859.51, 1859.105
10/26/04 ADOPT: 18361.1, 18361.2, 18361.3, 18361.4, 18361.5, 18361.6, 18361.7, 18361.8, AMEND: 18361.5, 18406, 18450.4, 18702.2 18702.5, 18740, 18747, 18754, 18951 REPEAL: 18361

09/29/04 ADOPT: 20107
 09/23/04 ADOPT: 588, 588.1, 588.2, 588.3, 588.4,
 588.5, 588.6, 588.7, 588.8, 588.9,
 5881.10
 09/23/04 AMEND: 18401, 18421.1
 09/15/04 ADOPT: 599.511 AMEND: 599.500(t)
 09/10/04 AMEND: 54300
 09/09/04 AMEND: 18704.2
 08/31/04 ADOPT: 599.517
 08/20/04 ADOPT: 586, 586.1, 586.2

Title 3

12/20/04 REPEAL: 305, 306
 11/29/04 AMEND: 3423(b)
 11/17/04 AMEND: 1703.3
 11/16/04 AMEND: Subchapter 1.1
 11/10/04 AMEND: 3601(g)
 11/03/04 ADOPT: 6450, 6450.1, 6450.2, 6450.3,
 6784 AMEND: 6000, REPEAL: 6450,
 6450.1, 6450.2, 6250.3, 6784
 10/25/04 AMEND: 3700(c)
 10/14/04 AMEND: 3423(b)
 10/13/04 AMEND: 3700(b)
 10/06/04 ADOPT: 2042, 2100, 2101, 2102
 10/06/04 AMEND: 3877(a), 3883, 3885(a)(b),
 4603(f) REPEAL: 3902
 10/04/04 AMEND: 1280.2
 09/22/04 AMEND: 3430(b)
 09/20/04 AMEND: 3700
 09/09/04 AMEND: 6502
 09/08/04 AMEND: 3423(b)
 09/08/04 ADOPT: 6450, 6450.1, 6450.2, 6450.3,
 6784 AMEND: 6000 REPEAL: 6450,
 6450.1, 6450.2, 6450.3, 6784
 09/02/04 AMEND: 3700(b)(c)
 08/19/04 AMEND: 3700(c)

Title 4

12/23/04 ADOPT: 10163, 10164 AMEND: 10152,
 10153, 10154, 10155, 10156, 10157,
 10158, 10159, 10160, 10161, 10162
 12/20/04 ADOPT: 12200, 12200.1, 12200.3,
 12200.5, 12200.6, 12200.7, 12200.9,
 12200.10A, 12200.10B, 12200.10C,
 12200.11, 12200.13, 12200.14, 12200.15,
 12200.16, 12200.17, 12200.18, 12200.20,
 12200.21, 12201, 12202, 12203, 12203A,
 12203.1, 12203.2, 12203.3, 12203.
 12/16/04 ADOPT: 144
 12/16/04 ADOPT: 10300, 10301, 10302, 10303,
 10304, 10305 10306, 10307, 10308,
 10309, 10310, 10311, 10312, 10313,
 10314, 10315, 10316, 10317, 10318,
 10319, 10320, 10321, 10322, 10323,
 10324, 10325, 10326, 10327, 10328,
 10329, 10330, 10331, 10332, 10333,
 10334, 1

11/29/04 AMEND: 1846.5
 11/23/04 ADOPT: 2444 AMEND: 2241, 2242,
 2243, 2245, 2250, 2270, 2271, 2272,
 2300, 2401, 2422, 2423, 2424, 2425,
 2426, 2441, 2442, 2443, 2505, 2507,
 2511, 2512
 11/08/04 ADOPT: 12360, 12370
 10/18/04 ADOPT: 12270, 12271, 12272
 10/14/04 AMEND: 1402, 1471, 2056, 2101, 2102,
 2103
 10/13/04 AMEND: 1371
 09/23/04 ADOPT: 144
 09/20/04 AMEND: 12101, 12122, 12250

Title 5

12/08/04 ADOPT: 9517.1 AMEND: 9515, 9517
 11/16/04 ADOPT: 80089.3, 80089.4
 11/15/04 ADOPT: 6116, 6126 AMEND: 6100,
 6115, 6125
 11/09/04 ADOPT: 14105
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